

REMARKS

Statement of the Substance of the Interview

The Applicant wishes to thank the Examiner for his courteousness in conducting telephonic interviews with the Applicant's representatives on June 27 and July 25, 2005. Pursuant to 37 C.F.R. § 1.133(b) and M.P.E.P. § 713.04, the Applicant provides this Statement of Substance of the Interview for the interview that took place on June 27. This statement is provided in addition to the Interview Summary, a copy of which is attached hereto as "Exhibit A." While Applicant agrees with the content of the Examiner's Summary, Applicant also respectfully submits that during the interview the Examiner suggested that Applicant consider further defining the notches in the outward facing surface of the second jaw.

Response

Claims 1-9 are currently pending. Claims 1-9 have been rejected. Applicant has amended claim 1. These amendments were presented to the Examiner as Proposed Claim Amendments on July 12, 2005, and Applicant's representatives discussed these amendments with the Examiner by telephone on July 25, 2005. Applicant appreciates and thanks the Examiner for his time in reviewing the amendments and discussing them with Applicant's representatives. Reconsideration is respectfully requested.

Claim Rejections – 35 U.S.C. § 103

The Examiner has rejected claims 1 and 4 pursuant to 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Design Patent No. 389,052 to Yamamoto (hereinafter, "Yamamoto") in view of Publication Date, June 1, 1959 to Cable Harness Clamp (hereinafter, "Cable Harness"). The Examiner alleges that Yamamoto teaches a one-piece molded clamp

comprising first and second jaws, the first jaw having a tension strap, and that Cable Harness "teaches the first jaw having a tension strap (6) with at least one through-aperture (7) and the second jaw having at least two notches (9) in the outward facing surface." *See* Office Action mailed May 17, 2005, page 2. The Examiner further alleges that it would have been obvious to modify Yamamoto's second jaw with at least two notches as taught by Cable Harness. *Id.*, pages 2-3. Applicant respectfully traverses the rejection.

The Examiner has the burden under 35 U.S.C. § 103 to establish a *prima facie* case of obviousness. In re Piasecki, 745 F.2d 1468 (Fed. Cir. 1984). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, the reference or combination of references must teach or disclose all of the claimed limitations of the invention. *See In re Zurko*, 111 F.3d 887, 42 USPQ2d 1476 (Fed. Cir. 1997). Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *See In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); M.P.E.P. § 2143.03. Third, if there is a teaching, suggestion, or incentive, it must motivate the skilled artisan to combine the teachings or suggestions with a reasonable expectation of success. Further, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in the applicant's disclosure. *See In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); M.P.E.P. § 2143.03. Therefore, it is improper for the Examiner to use the applicant's invention as a blueprint to hunt through the prior art for the claimed elements and then combine them as claimed. *See In re Zurko*, 111 F.3d 887, 42 USPQ2d 1476 (Fed. Cir. 1997).

Applicant respectfully submits that the Examiner has not satisfied the burden of establishing a *prima facie* case of obviousness. *See In re Piasecki*, 745 F.2d 1468 (Fed. Cir. 1984). Even though Yamamoto shows a design of a clamp, even in combination with Cable Harness, Yamamoto would not obviate Applicant's claimed invention because the combined references fail to teach or suggest all of the elements of Applicant's claimed invention. Cable Harness discloses a positive-locking clamp "in the form of a flexible nylon strap." *See* Cable Harness, page 1. The clamp comprises a toothed strap end 8 having teeth staggered on opposing sides thereof. The strap end portion 6 has a slotted aperture 7 through which the toothed strap end 8 is inserted and drawn. Cable Harness also discloses that "tooth 9a acts as a wedge on strap 6, forcing it against tooth 9b." *See* Cable Harness, page 1. Thus, Cable Harness discloses *teeth* rather than *notches* as required by Applicant's invention as claimed.

The Oxford American Dictionary defines a notch as "a V-shaped *indentation* on an edge or surface." Published by Oxford University Press, © 1999, definition 1 (emphasis added). In contrast, a tooth is defined as "a toothlike part or *projection*, especially one of a series that function or engage together." *Id.*, definition 2. (emphasis added). Thus, Yomamoto in view of Cable Harness cannot obviate Applicant's claimed invention because while Applicant's claimed invention has notches in the outer surface of the second jaw, Cable Harness discloses a toothed strap that has staggered teeth on opposite sides of the strap. Additionally, in Cable Harness "tooth 9a acts as a wedge on strap 6, forcing it against tooth 9b," so that strap 6 is wedged between the base of teeth 9a and 9b, thus creating a tension on the strap 6 from teeth on opposite sides. *See* Cable Harness, page 1. In contrast, in Applicant's claimed invention, when tension strap 40 is passed over the first end 26 of the second jaw 20, the strap can be releasably engaged

Serial No. 10/608,735

Amdt. dated July __, 2005

Reply to Office Action of May 17, 2005

into one of the at least one notches 30, 32, 34, 36, 38, with the perimeter size of the object to be secured and the amount of clamp force desired determining which notch is used. *See* Specification, page 4, lines 6-11. Thus, Yamamoto in view of Cable Harness do not teach or suggest all of the elements of Applicant's claimed invention, specifically a unitary clamp having first and second jaws and at least two notches in the outward facing surface of the second jaw, each of the notches being angularly offset from the outward facing surface, as required by Applicant's claim 1.

Furthermore, not only do Yamamoto in combination with Cable Harness not teach all of the elements of Applicant's claimed invention, additionally there is nothing in Yamamoto or any other cited references that suggests or motivates the skilled artisan to modify Yamamoto to include the teeth that act as a wedge which are disclosed by Cable Harness. *See* Cable Harness, page 1. Further, there is nothing that teaches or suggests that Yamamoto would even work with the teeth disclosed by Cable Harness. Even if they were combined, the use of staggered teeth on opposite sides of the strap to create tension on the strap is not, nor is it suggestive of, Applicant's claimed invention because Applicant's invention does not require opposing teeth. Rather, Applicant has notches on an outward facing surface, the notches being angularly offset therefrom. Therefore, because Yamamoto in view of Cable Harness do not teach or suggest every element of Applicant's claimed invention, Applicant respectfully submits that the cited combination of references do not obviate Applicant's claimed invention and therefore the rejection cannot stand. Withdrawal of the rejection is respectfully requested.

The Examiner has also rejected claim 4 pursuant to 35 U.S.C. § 103(a) as allegedly being unpatentable over Yamamoto in view of Cable Harness. It is well-established that if an

independent claim is non-obvious under 35 U.S.C. § 103, then any claims depending therefrom are also non-obvious. *See In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); M.P.E.P. § 2143.03. Given this, Applicant respectfully traverses Examiner's rejection because, as discussed above, Applicant's independent claim 1 is non-obvious since Yamamoto in view of Cable Harness fail to teach all of Applicant's claimed elements. As such, the rejection of claim 4, which depends on claim 1, cannot stand and withdrawal thereof is respectfully requested.

The Examiner has rejected claims 2 and 3 pursuant to 35 U.S.C. § 103(a) as allegedly being unpatentable over Yamamoto in view of Cable Harness and further in view of U.S. Patent No. 6,164,604 to Cirino et al. (hereinafter, "Cirino et al."). The Examiner alleges that "Cirino et al. teaches [sic] the inward facing surfaces having at least one protrusion thereon (12)" and that "it would have been obvious for one of ordinary skill in the art at the time the invention was made to have added protrusion to Yamamoto's inward facing surfaces as taught by Cirino et al. to provide a friction force to prevent an object from rotating when being retained in the clamp." *See* Office Action mailed May 17, 2005, page 3.

Since Yamamoto in view of Cable Harness fail to teach all of Applicant's claimed elements, Cirino et al.'s teaching with respect to a plurality of projections on the arcuate inner walls becomes moot. *See In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); M.P.E.P. § 2143.03. Therefore, because Yamamoto in view of Cable Harness do not teach the elements of Applicant's Independent claim 1, the addition of Cirino et al. cannot ameliorate the deficiencies thereof. Therefore, the rejection of dependent claims 2 and 3 cannot stand and withdrawal thereof is respectfully requested.

The Examiner has rejected claims 5 and 6 pursuant to 35 U.S.C. § 103(a) as allegedly being unpatentable over Yamamoto in view of Cable Harness and in further view of U.S. Patent No. 4,766,651 to Kobayashi et al. (hereinafter, "Kobayashi et al."). The Examiner alleges that "Kobayashi et al. teaches [sic] the means for mounting (11) and the surface (S) is the body of a vehicle. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added means for mounting to Yamamoto's clamp for mounting on surface of vehicle...." *See* Office Action mailed May 17, 2005, page 3. Applicant respectfully traverses the rejection.

Since Yamamoto in view of Cable Harness fail to teach all of Applicant's claimed elements, Kobayashi et al.'s teaching with respect to a fixing clip 11 attached to the lower side of planar body 10 for securing body 10 to a panel such as an automobile body becomes moot. Therefore, because Yamamoto in view of Cable Harness do not teach the elements of Applicant's Independent claim 1, the addition of Kobayashi et al. cannot ameliorate the deficiencies thereof. Therefore, the rejection of dependent claims 5 and 6 cannot stand and withdrawal thereof is respectfully requested.

The Examiner has rejected claim 7 pursuant to 35 U.S.C. § 103(a) as allegedly being unpatentable over Yamamoto in view of Cable Harness and in further view of U.S. Patent No. 5,930,872 to McBride et al. (hereinafter, "McBride et al."). The Examiner alleges that "McBride et al. teaches [sic] the clamp (10) is made of a polymer" and that "it would have been obvious for one of ordinary skill in the art at the time the invention was made to have modified Yamamoto's clamp material to polymer as taught by McBride et al." *See* Office Action mailed May 17, 2005, page 4.

Serial No. 10/608,735

Amdt. dated July __, 2005

Reply to Office Action of May 17, 2005

As discussed above, Yamamoto in view of Cable Harness does not teach or suggest all of the elements of Applicant's claimed invention. Further, there is no teaching or suggestion in either Yamamoto or Cable Harness to modify the clamp to arrive at the claimed invention with any reasonable expectation of success. Therefore, any alleged teaching in McBride et al. regarding the use of polymer material does not ameliorate the deficiencies of the combined references and withdrawal of the rejection is respectfully requested.

The Examiner has rejected claim 8 pursuant to 35 U.S.C. § 103(a) as allegedly being unpatentable over Yamamoto in view of Cable Harness and in further view of U.S. Patent No. 6,496,094 to May III (hereinafter, "May III"). The Examiner alleges that it would have been obvious to modify Yamamoto's clamp material to rubber as taught by May III. *See* Office Action mailed May 17, 2005, page 4. Applicant respectfully traverses Examiner's rejection.

Yamamoto in view of Cable Harness and in further view of May III fail to teach or suggest each and every element of Applicant's claimed invention. Furthermore, as discussed above, Yamamoto in view of Cable Harness do not teach or suggest each and every element of Applicant's claimed invention, nor is there any teaching or suggestion to modify the clamp to arrive at the claimed invention with any reasonable expectation of success. Therefore, any alleged teaching in May III regarding the use of rubber does not ameliorate the deficiencies of the combination of the Yamamoto and Cable Harness references.

The Examiner has rejected claim 9 pursuant to 35 U.S.C. § 103(a) as allegedly being unpatentable over Yamamoto in view of Cable Harness and further in view of U.S. Patent No. 3,827,093 to Davis (hereinafter, "Davis"). The Examiner alleges that it would have been

obvious to modify Yamamoto's clamp material to synthetic rubber as taught by Davis. *See* Office Action mailed May 17, 2005, pages 4-5. Applicant respectfully traverses the rejection.

As discussed above, Yamamoto in view of Cable Harness do not teach or suggest all of the elements of Applicant's claimed invention. Further, there is no teaching or suggestion to modify the clamp of Yamamoto to arrive at the claimed invention with any reasonable expectation of success. Therefore, any alleged teaching in Davis regarding the use of synthetic rubber does not ameliorate the deficiencies of the combination of the Yamamoto and Cable Harness references. As such, Applicant respectfully requests withdrawal of the rejection.

Finally, none of the prior art of record discloses unitary first and second jaws wherein there are at least two notches in said outward facing surface of said second jaw, each of said notches being angularly offset from said outward facing surface, and a tension strap unitarily formed with said first jaw, where said strap has at least one through-aperture through which said second jaw is able to pass, and wherein said tension strap is able to be releasably engaged with said notches, as claimed in Applicant's Claim 1.

Conclusion

Applicant respectfully submits that the patent application and the claims, as amended, are in a condition for allowance. Accordingly, reconsideration and allowance of the claims is respectfully requested.

Applicant would appreciate the courtesy of a telephone call should the Examiner have any questions or comments with respect to this response or the claim language for purposes of efficiently resolving same.

Serial No. 10/608,735
Amdt. dated July __, 2005
Reply to Office Action of May 17, 2005

The Commissioner is hereby authorized to charge Deposit Account No. 03-2026 for any fees associated with this Amendment and Response.

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Respectfully submitted,

By:

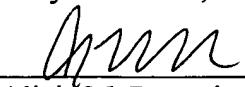

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Exhibit A



UNITED STATES PATENT AND TRADEMARK OFFICE

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 United States Patent and Trademark Office
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| 10/608,735 | 06/27/2003 | Donald J. Polak | 03-087 | 7698 |

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| EXAMINER | |
| WUJCIAK, ALFRED J | |
| ART UNIT | PAPER NUMBER |
| 3632 | |

DATE MAILED: 07/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

RECEIVED JUL 13 2005

Interview Summary



| | | |
|---------------------------|--------------|--|
| Application No. | Applicant(s) | |
| | POLAK ET AL. | |
| Examiner | Art Unit | |
| Alfred Joseph Wujciak III | 3632 | |

All participants (applicant, applicant's representative, PTO personnel):

- (1) Alfred Joseph Wujciak III. (3) _____.
(2) Alicia Passerin. (4) _____.

Date of Interview: 27 June 2005.

Type: a) Telephonic b) Video Conference
c) Personal [copy given to: 1) applicant 2) applicant's representative]

Exhibit shown or demonstration conducted: d) Yes e) No.
If Yes, brief description: _____.

Claim(s) discussed: 1-3.

Identification of prior art discussed: US Patent # D389,052 to Yamamoto, US Patent # 6,164,604 to Cirino et al. and Cable Hardness Clamp publication.

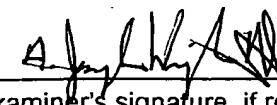
Agreement with respect to the claims f) was reached. g) was not reached. h) N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: The examiner recommended the applicant to provide additional details for strap in claim 1 by defining the strap is formed inwardly of 1st jaw, etc.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.


Examiner's signature, if required

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner.
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.